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Thursday, April 13, 2000

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re

ROBERT G. CAMPBELL,

No. 99-12316

[Debtor](#)  (s).

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ROBERT G. CAMPBELL,

[Plaintiff](#)  (s),

v.


A.P. No. 00-1015

JEAN E. CAMPBELL,

[Defendant](#)  (s).

_____ /

Memorandum of Decision

[Chapter 13](#)  debtor Robert Campbell and defendant Jean Campbell are former spouses.

In state court dissolution proceedings prior to bankruptcy, Jean claimed an interest in Robert's separate property at 17320 Keaton Avenue, Sonoma, California. The state court ruled that Jean had no right, title or interest in the property, but was entitled to a [claim](#)ⁱ of \$37,779.83 for a loan she had made to Robert. About a year prior to the bankruptcy, Jean filed another state court lawsuit against Robert regarding the Keaton Avenue property. In this action, she sought both specific performance and damages based on Robert's alleged fraud and breach of contract, as well as a declaration that she is a one-half owner of the property.

On July 23, 1999, Robert filed his Chapter 13 petition. Jean filed a [proof of claim](#)ⁱ based on her family law judgment. Robert proposed a [plan](#)ⁱ which did not mention Jean or treat her differently from creditors in general. The plan was confirmed on September 17, 1999.

Robert contends that Jean continued prosecution of her state court action without obtaining relief from the [automatic stay](#)ⁱ. Robert then commenced this action against Jean for injunctive relief and damages for violation of the automatic stay. Jean has moved the court to abstain, arguing that her rights should be adjudicated by the state court.⁽¹⁾ Robert has responded with a motion for partial summary judgment, arguing that [confirmation](#)ⁱ of his plan divested Jean of any rights in the property by operation of law. As far as the court can see, both sides have missed the mark. The state court action must be enjoined during the pendency of the Chapter 13, and permanently enjoined if Robert is discharged. All of the relief it seeks is based on a debtor-[creditor](#)ⁱ relationship. It alleges that Robert promised to convey an interest in his property, failed to do so, and as a result Jean is entitled to damages, specific performance and equitable relief. Any right to equitable relief as a remedy to correct a wrong is nothing more than an [unsecured claim](#)ⁱ pursuant to § 101(5)(B) of the [Bankruptcy Code](#)ⁱ, and is subject to [discharge](#)ⁱ. See *In re Golden Triangle Capital, Inc.*, 171 B.R. 79, 82 (9th Cir.BAP 1994). On the other hand, there is no merit to Robert's contention that any ownership rights Jean may have had were wiped out by his confirmed plan, just because he scheduled the property as his own. He relies on §§ 1327(b) and (c), which provide that confirmation vests all property *of the estate* in the debtor free and clear of any claim or interest *of any creditor* provided for by the plan. Some sorts of equitable remedies may be imposed outside the debtor-creditor relationship. *In re Golden Triangle Capital, Inc.*, *Id.* These may include resulting trusts, partition, and deed reformation. 2 **Collier on Bankruptcy** (15th Ed. Rev.) ¶ 101.05[5], p. 101-36.1. Where there is a claim that a trust arises out of intended ownership rights in the property, the property is not *property of the estate* (pursuant to § 541(d)) and the person claiming the ownership rights does not do so *as a creditor*. For this reason, a debtor is not entitled to collect tolls merely because he scheduled the Golden Gate Bridge as his property; the bridge authority's claim to ownership is not based on a debtor-creditor relationship, so § 1327 of the Bankruptcy Code is not applicable. The [schedules](#)ⁱ are intended merely as disclosure. There is no basis for the argument that anyone could lose any rights by failing to "object" to them, with the sole exception of claimed exemptions. Even as to exemptions, the schedules can create no rights. If the debtor schedules the Golden Gate Bridge as exempt and nobody objects within the time allowed, it does not mean that he can collect tolls. It merely means that he can keep whatever rights in the bridge he may have, if any. To summarize, the court rejects the Robert's argument that he divested Jean's ownership claims in his property by scheduling the property as his alone, or that confirmation of his plan had that effect. However, Jean cannot prosecute her pending action because it is based on a debtor-creditor relationship. Before the court could consider allowing her state court suit to proceed, it would have to be reworked to eliminate all claim for damages and remedies intended to compensate her for wrongs allegedly done to her. It may proceed only if she has any rights in the property independent of her status as a creditor.

For the above reasons, both motions will be denied. Counsel for either side may submit an appropriate form of order.

Dated: April 13, 2000

Alan Jaroslovsky

U.S. [Bankruptcy Judge](#) 

1. Jean seems to think that if the court abstained she could continue with her suit in state court, notwithstanding the automatic stay. There is no basis for this assum

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